

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

Joe ROSALES

**20 CV 2136**

Petitioner,

v.

Warden J. Petrucci

PETITION FOR A  
WRIT OF HABEAS  
CORPUS UNDER  
28 U.S.C. § 2241

Civ.        ( )

Respondent(s).

**YOU MUST COMPLETE THIS ENTIRE FORM**

1. Parties in this Petition:

a. You are the Petitioner. List your name and address. If you are currently in custody, include your identification number and the name and address of your current place of confinement.

Petitioner's Name: Joe ROSALES

Prisoner ID #: 5 6669 177

Alien #: N/A

Current Institution: FCI Otisville, NY

Address: Po Box 1000  
Otisville NY 10963-1000

b. List all Respondents by name, position, and place of employment. Make sure that the respondent(s) listed below are identical to those contained in the above caption. Attach additional pages of paper if necessary.

Respondent No. 1

Name: J. Petrucci - Warden

Where Currently Employed: FCI Otisville

Address: Po Box 600  
Otisville NY 10963-0600

RECEIVED  
SDNY PRO SE OFFICE  
2020 MAR - 9 AM 10:50

Respondent No. 2

Name: \_\_\_\_\_

Where Currently Employed: \_\_\_\_\_

Address: \_\_\_\_\_

Respondent No. 3

Name: \_\_\_\_\_

Where Currently Employed: \_\_\_\_\_

Address: \_\_\_\_\_

Respondent No. 4

Name: \_\_\_\_\_

Where Currently Employed: \_\_\_\_\_

Address: \_\_\_\_\_

2. This petition concerns (check one):

- a.  a conviction and/or a sentence
- b.  calculation of sentence
- c.  parole
- d.  prison disciplinary proceeding
- e.  detainer
- f.  other (explain) "Extra" Good Time under "First Step Act"

3. Provide the following information regarding the conviction(s) and sentence(s) for which you are currently incarcerated.

a. Name(s) and location(s) of court: USDC - N.D. TX

b. Case Number(s): 4:18-CR-00053-A (01)

c. Charge(s) of which you were convicted: 21 USC 846 - Drug Conspiracy  
21 USC 841 - Drug Possess

d. What was your plea?

- (1) Not guilty
- (2) Guilty
- (3) Nolo contendere

e. Did you appeal from the judgment of conviction?

Yes  No

4. If you did appeal, answer the following:

a. Name of court: USCA - 5<sup>TH</sup> Case #: 18-11302

b. Result: Denied - 4 Sept 2019

a. Ground One: In violation of the law - and due process - the BOP has misclassified me (under "PATTERN" Risk & Needs Assessment) as having a "Medium" risk of recidivism (wrongfully eliminating my "EXTRA" time credits under 18 USC § 3632(d)(4)(A)(ii))

Supporting FACTS: The BOP has formally refused to provide an "itemized" Copy of my "PATTERN" SCORE so I can challenge the mistakes which caused me to be a "Medium!" This makes me ineligible for the extra time credits I have already earned - due to my programming - and makes me ineligible for future credits too. Also it makes me ineligible for credit for "Productive Activities" I have already done and will do in the future. I am also now relegated to inferior, less safe prison placement - under § 3632(b) - than I would be eligible for with my correct - lower - PATTERN score.

(1) Have you presented Ground One to the Bureau of Prisons either through the prison grievance system or other administrative proceeding?

Yes  No

If yes, please provide the results of the proceeding(s) and the relevant date(s), including any appeals; if no, please explain why not: I was told any appeal would be futile - what they are doing is unchangeable, official BOP Policy. Staff has not timely responded to informal resolution efforts, making any grievance, untimely and impossible to file. Staff said they would "lock into" my concerns - leaving me with nothing further to grieve.

Ground Two: In violation of the law - and due process - the BOP is not providing me with the 18 USC § 3632(d) incentives for BOTT Evidence Based Programming AND Productive Activities - as defined by § 3635(3) that I have taken and continue to take that qualify me for these incentives, including time credits under § 3632(d)(4)(A).

Supporting FACTS: I have completed - and continue to participate in - many qualifying programs, yet I have received NONE of the incentives contained in the law. The BOP also has created their own list of qualifying programs/activities which does NOT include all of those provided under the law - and which I have completed, am participating in now, or am contemplating participating in.

Exhaustion:

(1) Have you presented Ground Two to the Bureau of Prisons either through the prison grievance system or other administrative proceeding?

Yes  No

If yes, please provide the results of the proceeding(s) and the relevant date(s), including any appeals; if no, please explain why not: (See ground one)

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c. Ground Three: In violation of my due process rights, and BOP Policy - Program Statement 5100.08 [Inmate Classification] - the BOP has wrongly Calculated my Security points - making me ineligible for a lower security prison transfer - including those under § 3632(d)(2)

Supporting FACTS: Several items, including my Criminal History score, were miscalculated. The BOP was aware of the facts underlying this miscalculation but did not correct the scoring or following their own rules/policies. Because of this I cannot get to a better, lower security, safer, prison closer to my Abilene, Texas home, which offers more FSA-eligible programs/activities. The BOP is also not considering me for a § 3632(d)(2) transfer despite my past and current participation in qualifying § 3635(3) programs

Exhaustion: and activities.

(1) Have you presented Ground Three to the Bureau of Prisons either through the prison grievance system or other administrative proceeding?

Yes  No

If yes, please provide the results of the proceeding(s) and the relevant date(s), including any appeals; if no, please explain why not: (See Ground one)

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d. Ground Four: \_\_\_\_\_

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Supporting FACTS: \_\_\_\_\_

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Exhaustion:

(1) Have you presented Ground Four to the Bureau of Prisons either through the prison grievance system or other administrative proceeding?

Yes  No

If yes, please provide the results of the proceeding(s) and the relevant date(s), including any appeals; if no, please explain why not:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

10. Based on the grounds raised above, what are you asking the Court to do?

Order BOP to allow me to review my itemized "PATTERN"

Score and correct the errors; provide retroactive time credits;  
Provide retroactive (and/ ) compensatory incentives for all programs valid  
under the law; correct my security level; consider me for a transfer;  
and all other available relief

\_\_\_\_\_

DECLARATION

I declare under the penalty of perjury that I have read the above and the information contained in this petition is true and correct.

2 March 2020

(Date)



Signature of Petitioner

IF MAILED BY PRISONER:

I declare under the penalty of perjury that this Petition was (check one):

delivered to prison officials for mailing or  deposited in the prison's internal mail system on

2 March 2020

(Date)



Signature of Petitioner

## CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of instituting the civil docket sheet.

## PLAINTIFFS

## DEFENDANTS

Joe ROSALESATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)  
(Pro se)J. PETRUCCI

ATTORNEYS (IF KNOWN)

US Attorney - S.D. NYCAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)  
(DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)28 USC § 2241Has this or a similar case been previously filed in SDNY at any time? No?  Yes?  Judge Previously AssignedIf yes, was this case Vol.  Invol.  Dismissed. No  Yes  If yes, give date \_\_\_\_\_ & Case No. \_\_\_\_\_

(PLACE AN [X] IN ONE BOX ONLY)

## NATURE OF SUIT

## ACTIONS UNDER STATUTES

	TORTS	FORFEITURE/PENALTY	Bankruptcy	OTHER STATUTES
CONTRACT	PERSONAL INJURY	PERSONAL INJURY		
<input type="checkbox"/> 110 INSURANCE	<input type="checkbox"/> 310 AIRPLANE	<input type="checkbox"/> 362 PERSONAL INJURY	<input type="checkbox"/> 422 APPEAL	<input type="checkbox"/> 400 STATE
<input type="checkbox"/> 120 MARINE	<input type="checkbox"/> 315 AIRPLANE PRODUCT LIABILITY	<input type="checkbox"/> 365 MED MALPRACTICE	<input type="checkbox"/> 423 WITHDRAWAL	<input type="checkbox"/> 410 ANTITRUST
<input type="checkbox"/> 130 MILLER ACT	<input type="checkbox"/> 320 ASSAULT, LIBEL & SLANDER	<input type="checkbox"/> 366 PERSONAL INJURY	<input type="checkbox"/> 425 DRUG RELATED	<input type="checkbox"/> 430 BANKS & BANKING
<input type="checkbox"/> 140 NEGOTIABLE INSTRUMENT	<input type="checkbox"/> 330 FEDERAL EMPLOYERS' LIABILITY	<input type="checkbox"/> 368 ASBESTOS PERSONAL INJURY PRODUCT LIABILITY	<input type="checkbox"/> 426 SEIZURE OF PROPERTY	<input type="checkbox"/> 450 COMMERCE
<input type="checkbox"/> 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT	<input type="checkbox"/> 340 MARINE PRODUCT LIABILITY	<input type="checkbox"/> 370 OTHER FRAUD	<input type="checkbox"/> 427 21 USC 881 LIQUOR LAWS	<input type="checkbox"/> 460 DEPORTATION
<input type="checkbox"/> 151 MEDICARE ACT	<input type="checkbox"/> 345 MARINE PRODUCT LIABILITY	<input type="checkbox"/> 371 TRUTH IN LENDING	<input type="checkbox"/> 428 RR & TRUCK	<input type="checkbox"/> 470 RACKETEER INFLUENCED & CORRUPT ORGANIZATION ACT (RICO)
<input type="checkbox"/> 152 RECOVERY OF DEFANTED STUDENT LOANS (EXCL VETERANS)	<input type="checkbox"/> 350 MOTOR VEHICLE	<input type="checkbox"/> 380 OTHER PERSONAL PROPERTY DAMAGE	<input type="checkbox"/> 429 AIRLINE REGS	<input type="checkbox"/> 480 CONSUMER CREDIT
<input type="checkbox"/> 153 RECOVERY OF OVERPAYMENT OF VETERAN'S BENEFITS	<input type="checkbox"/> 355 MOTOR VEHICLE PRODUCT LIABILITY	<input type="checkbox"/> 385 PROPERTY DAMAGE	<input type="checkbox"/> 430 OCCUPATIONAL SAFETY/HEALTH	<input type="checkbox"/> 490 CABLE/SATELLITE TV
<input type="checkbox"/> 160 STOCKHOLDERS SUITS	<input type="checkbox"/> 360 OTHER PERSONAL INJURY	<input type="checkbox"/> 386 PRODUCT LIABILITY	<input type="checkbox"/> 431 OTHER	<input type="checkbox"/> 510 TRADEMARK
<input type="checkbox"/> 190 OTHER CONTRACT LIABILITY				<input type="checkbox"/> 520 COPYRIGHTS
<input type="checkbox"/> 195 CONTRACT PRODUCT LIABILITY				<input type="checkbox"/> 530 PATENT
<input type="checkbox"/> 196 FRANCHISE				<input type="checkbox"/> 540 SOCIAL SECURITY
	ACTIONS UNDER STATUTES			<input type="checkbox"/> 550 HIA (1395T)
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS		<input type="checkbox"/> 562 BLACK LUNG (923)
<input type="checkbox"/> 210 LAND CONDEMNATION	<input type="checkbox"/> 441 VOTING	<input type="checkbox"/> 510 MOTIONS TO VACATE SENTENCE	<input type="checkbox"/> 563 DIVC/DIVW (405(g))	<input type="checkbox"/> 570 TAXES (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 220 FORECLOSURE	<input type="checkbox"/> 442 EMPLOYMENT	<input type="checkbox"/> 520 USC 2255	<input type="checkbox"/> 564 SSID TITLE XVI	<input type="checkbox"/> 580 12 USC 3410
<input type="checkbox"/> 230 RENT LEASE & EJECTMENT	<input type="checkbox"/> 443 HOUSING/ACCOMMODATIONS	<input checked="" type="checkbox"/> 530 HABEAS CORPUS	<input type="checkbox"/> 565 RSI (405(g))	<input type="checkbox"/> 590 OTHER STATUTORY ACTIONS
<input type="checkbox"/> 240 TORTS TO LAND	<input type="checkbox"/> 444 WELFARE	<input type="checkbox"/> 535 DEATH PENALTY	<input type="checkbox"/> 570 FAIR LABOR STANDARDS ACT	<input type="checkbox"/> 600 AGRICULTURAL ACTS
<input type="checkbox"/> 245 TORT PRODUCT LIABILITY	<input type="checkbox"/> 445 AMERICANS WITH DISABILITIES - EMPLOYMENT	<input type="checkbox"/> 540 MANDAMUS & OTHER	<input type="checkbox"/> 572 LABOR/MGMT RELATIONS	<input type="checkbox"/> 610 ECONOMIC STABILIZATION ACT
<input type="checkbox"/> 290 ALL OTHER REAL PROPERTY	<input type="checkbox"/> 446 AMERICANS WITH DISABILITIES - OTHER	<input type="checkbox"/> 550 CIVIL RIGHTS	<input type="checkbox"/> 573 REPORTING & DISCLOSURE ACT	<input type="checkbox"/> 620 CUSTOMER CHALLENGE
		<input type="checkbox"/> 440 OTHER CIVIL RIGHTS	<input type="checkbox"/> 555 PRISON CONDITION	<input type="checkbox"/> 574 RAILWAY LABOR ACT
				<input type="checkbox"/> 575 OTHER LABOR LITIGATION
				<input type="checkbox"/> 576 EMPL RET INC SECURITY ACT
				<input type="checkbox"/> 577 IRS-THIRD PARTY
				<input type="checkbox"/> 578 26 USC 7609
				<input type="checkbox"/> 580 ENERGY ALLOCATION ACT
				<input type="checkbox"/> 585 FREEDOM OF INFORMATION ACT
				<input type="checkbox"/> 590 APPEAL OF FEE DETERMINATION
				<input type="checkbox"/> 595 UNDER EQUAL ACCESS TO JUSTICE
				<input type="checkbox"/> 600 CONSTITUTIONALITY OF STATE STATUTES

Check if demanded in complaint

 CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y.? IF SO, STATE:

DEMAND \$ \_\_\_\_\_ OTHER \_\_\_\_\_ JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

Check YES only if demanded in complaint  
JURY DEMAND:  YES  NO

NOTE: Please submit at the time of filing an explanation of why cases are deemed related.

(PLACE AN X IN ONE BOX ONLY)

## ORIGIN

1 Original Proceeding  2a. Removed from State Court  3 Remanded from Appellate Court  4 Relisted or Reopened  5 Transferred from (Specify District)  6 Multidistrict Litigation  7 Appeal to District Judge from Magistrate Judge Judgment  
 2b. Removed from State Court AND at least one party is pro se.

(PLACE AN X IN ONE BOX ONLY)

1 U.S. PLAINTIFF  2 U.S. DEFENDANT  3 FEDERAL QUESTION  4 DIVERSITY (U.S. NOT A PARTY)

IF DIVERSITY, INDICATE CITIZENSHIP BELOW.  
(28 USC 1332, 1441)

## CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY)

(Place an X in one box for Plaintiff and one box for Defendant)

N/A

CITIZEN OF THIS STATE	PTF <input checked="" type="checkbox"/> DEF <input type="checkbox"/>	CITIZEN OR SUBJECT OF A FOREIGN COUNTRY	PTF <input type="checkbox"/> DEF <input type="checkbox"/>	INCORPORATED and PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE	PTF <input type="checkbox"/> DEF <input type="checkbox"/>
CITIZEN OF ANOTHER STATE	<input type="checkbox"/> 12 <input type="checkbox"/> 12	INCORPORATED or PRINCIPAL PLACE OF BUSINESS IN THIS STATE	<input type="checkbox"/> 14 <input type="checkbox"/> 14	FOREIGN NATION	<input type="checkbox"/> 16 <input type="checkbox"/> 16

## PLAINTIFF(S) ADDRESS(ES) AND COUNTY(IES)

#56669177 (FCI Otisville)

PO Box 1000  
Otisville NY 10963-1000

(County of Orange)

## DEFENDANT(S) ADDRESS(ES) AND COUNTY(IES)

FCI Otisville - Warden's Office  
PO Box 600  
Otisville NY 10963-0600

(County of Orange)

## DEFENDANT(S) ADDRESS UNKNOWN

REPRESENTATION IS HEREBY MADE THAT, AT THIS TIME, I HAVE BEEN UNABLE, WITH REASONABLE DILIGENCE, TO ASCERTAIN THE RESIDENCE ADDRESSES OF THE FOLLOWING DEFENDANTS:

N/A

Check one: THIS ACTION SHOULD BE ASSIGNED TO:  WHITE PLAINS  MANHATTAN  
(DO NOT check either box if this a PRISONER PETITION.)DATE  
2 March 2020

SIGNATURE OF ATTORNEY OF RECORD

RECEIPT #

ADMITTED TO PRACTICE IN THIS DISTRICT

 NO[ ] YES (DATE ADMITTED Mo. \_\_\_\_ Yr. \_\_\_\_)  
Attorney Bar Code #

Magistrate Judge is to be designated by the Clerk of the Court.

Magistrate Judge \_\_\_\_\_ is so Designated.

Ruby J. Krajick, Clerk of Court by \_\_\_\_\_ Deputy Clerk, DATED \_\_\_\_\_

UNITED STATES DISTRICT COURT (NEW YORK SOUTHERN)

Please send me my  
Case # and I will send  
a US Treasury check for \$5  
from my account.

Thanks

es # 56669177  
correctional Institution

410963-1000

2020 MAR - 5 APR. 01

MAIL

• STATES DISTRICT COURT  
PRO SE OFFICE — Room 230  
500 PEARL Street  
NY NY 10007

10007-1st pass

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